

Date: September 23, 2008

Item No. 16
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Frank Darby

Date: September 17, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

ARTICLE XV: ETHICSSec. 15.100. Ethics Commission.Sec. 15.101. Executive Director and Commission Staff.Sec. 15.102. Rules and Regulations.Sec. 15.103. Conflict of Interest.Sec. 15.105. Suspension and Removal.Sec. 15.107. Reporting of Campaign Financing.**SEC. 15.100. ETHICS COMMISSION.**

The Ethics Commission shall consist of five members who shall serve six-year terms; provided that the first five commissioners to be appointed to take office on the first day of February, 2002 shall by lot classify their terms so that the term of one commissioner shall expire at 12:00 o'clock noon on each of the second, third, fourth, fifth and sixth anniversaries of such date, respectively; and, on the expiration of these and successive terms of office, the appointment shall be made for six-year terms.

The Mayor, the Board of Supervisors, the City Attorney, the District Attorney and the Assessor each shall appoint one member of the Commission. The member appointed by the Mayor shall have a background in public information and public meetings. The member appointed by the City Attorney shall have a background in law as it relates to government ethics. The member appointed by the Assessor shall have a background in campaign finance. The members appointed by the District Attorney and Board of Supervisors shall be broadly representative of the general public.

In the event a vacancy occurs, the officer who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. Members of the Commission shall serve without compensation. Members of the Commission shall be officers of the City and County, and may be removed by the appointing authority only pursuant to section 15.105.

No person may serve more than one six-year term as a member of the Commission, provided that person appointed to fill a vacancy for an unexpired term with less than three years remaining or appointed to an initial term of three or fewer years shall be eligible to be appointed to one additional six-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person who completes a term as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term. Notwithstanding any provisions of this section or any other section of the Charter to the contrary, the respective terms of office of the members of the Commission who shall hold office on the first day of February, 2002, shall expire at 12 o'clock noon on said date, and the five persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2002, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such date, the sitting member shall continue to serve until replaced the new appointee.

During his or her tenure, members and employees of the Ethics Commission are subject to the following restrictions:

- (a) **Restrictions on Holding Office.** No member or employee of the Ethics Commission may hold any other City or County office or be an officer of a political party.
- (b) **Restrictions on Employment.** No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City and County and no employee of the Commission may hold any other employment with the City and County.
- (c) **Restrictions on Political Activities.** No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office. For the purposes of this section, participation in a campaign include but is not limited to making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to participate in a campaign.

The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

Amended November 2001; November 2002; November 2003)

SEC. 15.101. EXECUTIVE DIRECTOR AND COMMISSION STAFF.

The Commission shall appoint and may remove an Executive Director. The Executive Director shall have background in campaign finance, public information and public meetings and the law as it relates to governmental ethics. The Executive Director shall be the chief executive of the department and shall have all the powers provided for department heads. Subject to the civil service provisions of this Charter, the Executive Director shall have the power to appoint and remove other employees of the Commission. In addition to any other conflict of interest provisions applicable to City employees, the Executive Director and all other employees of the Commission shall be subject to the conflict of interest provisions in Section 15.100, except that the post-employment restrictions contained therein shall apply only to the Executive Director and management-level employees.

Amended November 2001)

SEC. 15.102. RULES AND REGULATIONS.

The Commission may adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics and to govern procedures of the Commission. In addition, the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records. The Commission shall transmit to the Board of Supervisors rules and regulations adopted by the Commission within 24 hours of their adoption. A rule or regulation adopted by the Commission shall become effective 30 days after the date of its adoption unless before the expiration of this 60-day period two-thirds of all members of the board of Supervisors vote to veto the rule or regulation.

The City Attorney shall be the legal advisor of the Commission.

Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members.

Amended November 2001)

SEC. 15.103. CONFLICT OF INTEREST.

Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. The City may adopt conflict of interest and governmental ethics laws to implement this provision and to prescribe penalties in addition to discipline and removal authorized in this Charter. All officers and employees of the City and County shall be subject to such conflict of interest and governmental ethics laws and the penalties prescribed by such laws.

Amended November 2003)

SEC. 15.104.

Repealed November 2003)

SEC. 15.105. SUSPENSION AND REMOVAL.

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and

Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission, and the Entertainment Commission may be suspended and removed pursuant to the provisions of subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

- (i) a court's final conviction of that official of a felony crime involving moral turpitude; and
- (ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for an elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

- (i) a final conviction of a felony crime involving moral turpitude; and
- (ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

- (i) a final conviction of a felony crime involving moral turpitude; and
- (ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(e) **OFFICIAL MISCONDUCT.** Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office. (Amended November 2001; March 2002; November 2003)

SEC. 15.106.

Repealed November 2003)

SEC. 15.107. REPORTING OF CAMPAIGN FINANCING.

The Board of Supervisors shall, by ordinance, prescribe requirements for campaign contributions and expenditure and any limitations thereon with respect to candidates for elective office and ballot measures in the City and County.

SEC. 15.108.

Repealed November 2003)

San Francisco
Ethics Commission



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ETHICS COMMISSION
REGULATIONS FOR INVESTIGATIONS
AND ENFORCEMENT PROCEEDINGS

Effective Date: July 5, 1997
Includes technical amendments effective April 13, 2002;
Streamlined Process for Complaints Alleging a Failure to File Campaign Finance Disclosure
Reports effective August 15, 2004; amendments effective October 10, 2005;
amendments effective March 10, 2006; and amendments effective November 10, 2006

Table of Contents

I.	Preamble.....	1
II.	Definitions.....	1
III.	Complaints	2
IV.	Review of Complaint.....	3
V.	Determination That There is Not Probable Cause to Believe a Violation of Law Has Occurred.....	4
VI.	Recommendation That There is Probable Cause to Believe a Violation of Law Has Occurred.....	5
VII.	Response to the Probable Cause Report; Rebuttal.....	6
VIII.	Probable Cause Hearing; Determination of Whether and How to Proceed with a Hearing on the Merits.....	6
IX.	Issuance of Accusation; Scheduling and Notice of Hearing on Merits	8
X.	Discovery; Hearing Briefs; Preliminary Matters	9
XI.	Discovery of Exculpatory Evidence Prior to Hearing on the Merits.....	10
XII.	Hearing on the Merits	11
XIII.	Miscellaneous Provisions.....	13
XIV.	Stipulated Orders.....	17
XV.	Severability	18

I. PREAMBLE

These Regulations of the San Francisco Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of State and City laws relating to campaign finance, lobbying, campaign consulting, campaign consulting, conflicts of interest and governmental ethics by:

1. Setting and maintaining objective standards for the investigation and prosecution of matters brought before the Commission;
2. Eliminating any political or improper influence in the investigation and prosecution of persons accused of ethics violations;
3. Protecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission;
4. Setting and enforcing reasonable time limits within which enforcement proceedings should be completed;
5. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice;
6. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "City" means the City and County of San Francisco
- B. "City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, and governmental ethics" include, but are not limited to: San Francisco Charter section 15.100 et seq. and Appendix C (ethics), and the San Francisco Campaign and Governmental Conduct Code.
- C. "Commission" means the Ethics Commission.
- D. "Complainant" means a person or entity that makes a complaint.
- E. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.
- F. "Deliver" means serve, as defined in this Section, or transmit by registered mail, return receipt requested.

- G. “Enforcement action” means an action pursuant to San Francisco Charter section C3.699-13.
- H. “Exculpatory information” means information tending to show that the respondent is not guilty of the alleged violations.
- I. “Executive Director” means the Executive Director of the Ethics Commission or the Executive Director’s designee.
- J. “Mitigating information” means information tending to excuse or reduce the significance of the respondent’s conduct.
- K. “Probable cause” means that based on the evidence presented there is reason to believe that the respondent committed a violation of City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics.
- L. “Respondent” means a person or entity that is alleged in a complaint to have violated State or City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics.
- M. “Service” means actual receipt by the person or entity to whom the material is directed, or by an agent authorized to accept service on behalf of the person or entity to whom the material is directed. For purposes of these Regulations, service may be made by leaving copies of the material with a responsible person at either the residence or place of business of the person or entity to whom the material is directed.
- N. “State laws relating to campaign finance, conflicts of interest, and governmental ethics” include, but are not limited to the Political Reform Act of 1974, Government Code section 81000 et seq., Government Code section 1090, and Government Code section 3201 et seq.
- O. “Stipulated order” means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.
- P. “Working day” is any day other than a Saturday, Sunday or City holiday.

III. COMPLAINTS

A. **Formal Complaints**

1. Any person or entity may file a formal complaint alleging violations of State or City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics. Formal complaints must be made in writing on a form specifically provided by the Commission staff, and must be dated, verified and signed by the complainant under penalty of perjury. If the complainant is an entity, the complaint must be verified and signed under penalty of perjury by an authorized officer or agent of

the entity. Formal complaints must include the following information, upon the complainant's information and belief:

- (a) the name and address of the respondent;
- (b) the provision(s) of law allegedly violated;
- (c) the facts constituting the alleged violation(s);
- (d) the names and addresses of witnesses, if any;
- (e) identification of documents or other evidence which may prove the facts constituting the alleged violation(s), if any;
- (f) the name and address of the complainant; and
- (g) the telephone number at which the complainant may be reached during normal business hours.

2. The Executive Director shall process and review all formal complaints.

B. Informal Complaints

The Executive Director shall have no obligation but has the discretion to process and review informal complaints. Informal complaints include the following: written complaints that are not verified or signed under penalty of perjury, and/or that do not contain the information required by Section III, subsection A, above; unwritten complaints; and referrals from other governmental agencies.

C. Complaints Initiated by the Commission

Complaints may be initiated by the Commission, its staff, or any individual Commissioner. These complaints need not conform to the requirements for formal complaints specified in subsection A of this Section. The Executive Director shall review and process all complaints initiated by the Commission and individual Commissioners. The Executive Director shall have no obligation but has the discretion to process and review complaints initiated by Commission staff.

D. Complaints Made at Public Meetings

The Commission shall not receive complaints at public meetings. The Commission shall urge the public in the strongest terms possible not to make complaints at public meetings.

IV. REVIEW OF COMPLAINTS

A.1. There is No Reason to Believe a Violation Occurred. If, based on the allegations and information contained in a complaint, the Executive Director determines that there is no reason to believe that a violation of State or City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest or governmental ethics has occurred, the Executive Director may dismiss the complaint and take no further action on the complaint, except: 1) inform the complainant of the Executive Director's decision; 2) at

his or her discretion, issue a warning letter to the respondent; and 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

A.2. The Executive Director shall provide a monthly summary to the Commission of each complaint dismissed, including the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

B.1. There is Reason to Believe a Violation Occurred. If, based on the allegations and information contained in a complaint, the Executive Director determines that there is reason to believe that a violation of State or City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest or governmental ethics may have occurred, the Executive Director shall immediately forward the complaint to the District Attorney and the City Attorney. The Executive Director may commence an investigation and notify respondent(s) that a complaint has been filed by providing a brief summary of the allegations, excluding the name of the complainant.

B.2. Within ten business days after receipt of the complaint, the District Attorney and City Attorney shall inform the Commission whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the complaint.

B.3. An investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, and the review of documentary and other evidence.

B.4. During an investigation, the Executive Director may if necessary compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

V. **DETERMINATION THAT THERE IS NOT PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED**

* A. At the conclusion of the investigation, if the Executive Director determines that there is not probable cause to believe that a violation of state or local law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any two or more members of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than 10 days after the date the Executive Director informs the Commission of the Executive Director's determination. Commissioner's requests that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than 5 days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

A.1. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is probable cause to believe that a violation of State or City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest or governmental ethics may have occurred, the Commission shall direct the Executive Director to either further investigate the matter or prepare a probable cause report and schedule a probable cause hearing.

A.2. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is not probable cause to believe that a violation of law has occurred, the Commission shall take no further action on the complaint other than: 1) inform the complainant and respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

* A.3. If the Executive Director determines that there is not probable to believe that a violation of State or City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest or governmental ethics has occurred, and if after the Executive Director informs the Commission of the determination the Commission does not calendar the matter for consideration, the Executive Director shall take no further action except: 1) inform the complainant and respondent of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

VI. RECOMMENDATION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED

A. When the Executive Director concludes an investigation, and determines there is probable cause to believe a violation of state or local law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics has occurred, the Executive Director shall prepare a written "probable cause report" and schedule a probable cause hearing. The probable cause report shall contain a summary of law and evidence gathered through the investigation, including any exculpatory and mitigating information. The Executive Director may consider as evidence statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. Unless otherwise permitted by the Commission Chair for good cause shown, the probable cause report shall not exceed 25 pages excluding attachments.

B. The Executive Director shall deliver to the respondent a copy of the probable cause report. The complaint is deemed to have been brought by the Commission on the date of service. The Executive Director shall deliver to each respondent written notice of the date, time and location of the probable cause hearing, together with a copy of the probable cause report, at least 30 days in advance of the hearing date. The notice shall include a statement that each respondent has the right to be present and represented by counsel at the probable cause hearing.

C. Unless otherwise decided by the Commission, the Commission shall sit as a hearing panel to conduct the probable cause hearing. The Commission may assign one of its members or an outside hearing officer to conduct the probable cause hearing and submit a report and recommendation to the Commission.

VII. RESPONSE TO THE PROBABLE CAUSE REPORT; REBUTTAL

A. Response to the Probable Cause Report

1. Each respondent may submit a written response to the probable cause report. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the response shall not exceed 25 pages excluding attachments.

2. Each respondent who chooses to submit a response must deliver the response no later than 15 days prior to the date of the probable cause hearing. The respondent must deliver a total of eight copies of the response to the Commission and Executive Director. The respondent must also deliver one copy of the response to each other respondent named in the probable cause report.

B. Rebuttal

The Executive Director may submit evidence or argument in rebuttal to a response. If the Executive Director chooses to do so the Executive Director must serve the rebuttal on the Commission members and each respondent named in the probable cause report no later than 7 days prior to the date of the probable cause hearing. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the rebuttal shall not exceed 15 pages excluding attachments.

VIII. PROBABLE CAUSE HEARING; DETERMINATION OF WHETHER AND HOW TO PROCEED WITH A HEARING ON THE MERITS

A. General Rules and Procedures

1. Unless the respondent requests that the probable cause hearing be held in public, the hearing shall be closed to the public to the extent permitted by state law.

2. Formal rules of evidence shall not apply to probable cause hearings held pursuant to these Regulations.

3. The Commission may find there is probable cause to believe a violation of City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics has occurred only if the evidence is sufficient to lead a person of

ordinary caution and prudence to believe that a violation has been committed and that the respondent committed or caused the violation.

B. Probable Cause Determination

1. If the Commission as a whole conducts the probable cause hearing, the Commission shall make the probable cause determination no later than 45 days after the date the hearing is concluded. If the Commission assigns one of its members or an outside hearing officer to conduct the probable cause hearing, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded, and the Commission shall make the probable cause determination no later than 45 days after the report and recommendation is delivered.
2. A determination that there is probable cause to believe that a violation has occurred shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape or reading the transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.
3. The Commission shall not make a finding of probable cause if it is presented with clear and convincing evidence that, prior to the alleged violation:
 - (a) the respondent had requested and obtained a written opinion from the Commission or its staff; and
 - (b) the respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case; and
 - (c) the Commission or its staff issued a formal, written opinion with which both the District Attorney and City Attorney concur; and
 - (d) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the formal, written opinion of the Commission or its staff.
4. If the Commission determines that there is not probable cause to believe a violation has occurred, the Commission shall dismiss the complaint and take no further action on the complaint, except the Executive Director. 1) inform the complainant and each respondent of the Commission's decision; 2) at the direction of the Commission, issue a warning letter to the respondent; and 3) at the direction of the Commission, refer the complaint to another agency for its appropriate action.
5. If the Commission determines that there is probable cause to believe a violation of City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics has occurred, this determination shall be announced in open session by the Commission. The announcement shall contain a summary of the allegations and a cautionary statement that each respondent is presumed to be innocent

unless and until such time that the allegations are proved in a subsequent hearing on the merits.

C. Determination How to Proceed with Hearing on Merits

1. Following a determination of probable cause by the Commission, the Commission shall proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission, the Commission shall sit as the hearing panel to hear the merits of the case. The Commission may sit as the hearing panel to hear the case, with an outside hearing officer presiding, or designate an individual Commissioner or an outside hearing officer to hear the case and file a report and recommendation for decision by the Commission.

2. The Commission shall provide for resolution, in advance of the hearing on the merits, of preliminary matters. Unless otherwise decided by the Commission, the Commission Chair shall hear and decide preliminary matters pursuant to Section X subsection B. The Commission may designate an individual Commissioner or an outside hearing officer to hear and decide preliminary matters. The Commission shall also provide for the issuance of subpoenas.

IX. ISSUANCE OF ACCUSATION; SCHEDULING AND NOTICE OF HEARING ON MERITS

A. Issuance of Accusation

Except as provided in Section XI, following a determination of probable cause by the Commission, the Executive Director shall issue an accusation. The accusation shall clearly specify the provisions of the City Charter or ordinances which were allegedly violated and shall set forth the acts or omissions with which each respondent is charged. The Executive Director shall deliver a copy of the accusation to each respondent at least 45 days prior to the date of the hearing on the merits. The accusation is a public document. The Executive Director shall present the case in support of the accusation at the hearing on the merits.

B. Scheduling and Notice of Hearing on Merits

1. The Executive Director shall schedule the hearing on the merits, and deliver written notice of the date, time and location of the hearing to each respondent at least 45 days prior to the date of the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a hearing will be held before the Ethics Commission (or name of hearing officer or assigned Commissioner) at ___ on the ___ day of ___, 20___, at the hour of ___, at (location of _____), upon the charges made in the accusation. You may be present

at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and will be given an opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Commission on or before (date).”

X. DISCOVERY; HEARING BRIEFS; PRELIMINARY MATTERS.

A. Discovery

The Executive Director and each respondent shall be entitled to pre-hearing discovery in accordance with the provisions of California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

B. Resolution of Preliminary Matters

1. The Executive Director and any respondent may present preliminary matters, unrelated to the merits of the accusation, to the assigned Commissioner or hearing officer designated to hear such matters pursuant to Section VIII subsection C(2). Preliminary matters may include, but are not limited to, the following:

- (a) procedural matters;
- (b) disqualification of any member of the Commission from participation in the hearing on the merits; and
- (c) any other matters not related to the truth or falsity of the factual allegations in the accusation.

2. A request for resolution of preliminary matters must be delivered to the assigned Commissioner or hearing officer no later than 25 days prior to the date of a hearing on the merits. At the same time that the request is delivered to the assigned Commissioner or hearing officer, the requester must deliver copies of the request to the Executive Director and each other respondent named in the accusation.

3. The request for resolution of preliminary matters may contain legal arguments and a summary of the facts underlying the request. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the request shall not exceed 15 pages excluding attachments.

4. The Executive Director and each respondent may submit a written opposition to a request for resolution of preliminary matters. The opposition must be delivered to the assigned Commissioner or hearing officer no later than 15 days prior to the date of a hearing on the merits. At the same time that the opposition is delivered to the assigned Commissioner or hearing officer, the party submitting the opposition must deliver copies of the opposition to the Executive Director and each other respondent named in the

accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the opposition shall not exceed 10 pages excluding attachments.

5. The assigned Commissioner or hearing officer shall issue a written decision on each request for resolution of preliminary matters no later than five days prior to the date of the hearing on the merits.

6. The Executive Director or any respondent may submit a written request for reconsideration, by the Commission, assigned Commissioner or hearing officer who will conduct the hearing on the merits, of any decision made on preliminary matters. A party requesting reconsideration shall serve the request on the Commission, assigned Commissioner or hearing officer, and the Executive Director and any other respondent, no less than 3 days prior to the hearing on the merits.

C. Hearing Briefs

The Executive Director shall, and any respondent may, submit a hearing brief. The brief shall outline significant legal arguments and evidence to be presented at the hearing. Six copies of the brief shall be delivered to the Commission, assigned Commissioner, or outside hearing officer no later than 20 days prior to the date of the hearing on the merits. The Executive Director shall deliver a copy of the Executive Director's brief to each respondent named in the accusation. Each respondent who chooses to submit a brief shall deliver copies of the respondent's brief to the Executive Director and to each other respondent named in the accusation.

D. Issuance of Hearing Subpoenas

The Executive Director and any respondent named in the accusation may request the issuance of subpoenas for the attendance of witnesses and for the production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 days prior to the hearing on the merits. The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the request is for a document subpoena, it shall be accompanied by a declaration which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued only upon approval of the Commission.

XI. DISCOVERY OF EXCULPATORY EVIDENCE PRIOR TO HEARING ON THE MERITS

A. If the Executive Director discovers information which exonerates the respondent(s) after a determination of probable cause and before a hearing on the merits, the Executive Director may present this exculpatory information to the Commission and recommend dismissal of the complaint. In such situations, if he or she has not done so

already, the Executive Director is not required to issue an accusation and the Commission need not hold a hearing on the merits, unless the Commission overrides the Executive Director's dismissal recommendation, pursuant to Section XI.B.

B. The Executive Director shall present the exculpatory information and dismissal recommendation to the Commission in a public memorandum. Thereafter, any two or more members of the Commission may cause the complaint to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than 10 days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a complaint be calendared must be received by the Executive Director no fewer than 5 days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

XII. HEARING ON THE MERITS

A. General Rules and Procedures

1. Public Hearing

The hearing on the merits shall be open to the public, provided that witnesses may be excluded at the discretion of the Commission, assigned Commissioner, or hearing officer.

2. Standard of Proof

The Commission may determine that a violation of City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics has occurred only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the violation has occurred.

3. Rules of Evidence

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in a hearing on the merits. The Executive Director and each respondent shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any evidence presented.

4. Oral Argument

At the hearing, the Executive Director and each respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

B. Finding of Violation

If the Commission as a whole conducts the hearing on the merits, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether a violation of City law has occurred. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing on the merits, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether a violation of City law has occurred.

The votes of at least three Commissioners are required to find a violation of City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

C. Administrative Orders and Penalties

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation. The Commission may issue orders and penalties requiring the respondent(s) to:
 - (a) cease and desist the violation;
 - (b) file any reports, statements or other documents or information required by law; and/or
 - (c) pay a monetary penalty to the general fund of the City of up to five thousand dollars (\$5,000) for each violation, or three times the amount which the respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

2. When deciding on an order and penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:
 - (a) the severity of the violation;
 - (b) the presence or absence of any intention to conceal, deceive, or mislead;
 - (c) whether the violation was deliberate, negligent or inadvertent;
 - (d) whether the violation was an isolated incident or part of a pattern;
 - (e) whether the respondent has a prior record of violations of City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics; and
 - (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

D. Finding of No Violation

If the Commission determines that there is insufficient evidence to establish that a violation has occurred, or if the Commission determines that there is sufficient evidence to establish that no violation has occurred, the Commission shall publicly announce this fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and complainant of the Commission's determination.

XIII. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications

Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside a hearing, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary for the conduct of the investigation or enforcement action.

B. Access to Complaints and Related Documents and Deliberations

1. No complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed to any person other than a respondent or respondent's representative, the City Attorney, District Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a determination concerning probable cause. After a determination of probable cause, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act (Government Code section 6250).

2. In addition to the prohibition on ex parte communications stated in Section XIII subsection A, Commissioners and Commission staff are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action. After a final determination on the merits of a complaint, Commissioners and staff members may discuss matters in the public record.

C. Oaths and Affirmations

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

D. Selection of Designee by the Executive Director

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

E. Powers and Duties of Hearing Officers

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.

2. When an individual Commissioner or a hearing officer is assigned to hear and decide preliminary matters in advance of a hearing on the merits, he or she shall make an actual determination. This determination may be reviewed by the Commission upon request by the Executive Director or a respondent, pursuant to the procedures specified in Section XI subsection B(6).

3. When an individual Commissioner or a hearing officer is assigned to conduct a probable cause hearing or hearing on the merits, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, and each respondent no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.

4. When a hearing officer presides over a hearing conducted by the Commission, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

F. Statute of Limitations

A probable cause report must be served within the period specified in the applicable statute of limitations. If there is no statute of limitations for violations of the law allegedly violated, the probable cause report must be served within five years of the date of events which form the basis of the complaint, or the date that the events constituting the basis of the complaint were discovered by the Ethics Commission, whichever is later. For statute of limitations purposes, a complaint is filed by the Executive Director upon the date of service of the probable cause report.

G. Extensions of Time and Continuances

Whenever the Executive Director, a respondent, a witness, an assigned Commissioner or hearing officer is required to complete an act or produce materials pursuant to these Regulations, that party may request an extension of time. Requests for extensions of time may be made to the Commission Chair or the Commission Chair's designee. The requester must serve the request on the Commission Chair and provide a copy of the request to the opposing party no later than 10 working days before the deadline to complete an act or produce materials. The Commission Chair shall have the discretion to consider untimely requests. The Commission Chair or the Commission Chair's designee shall approve or deny the request within five working days of the submission of the request. The Commission Chair or the Commission Chair's designee may grant the request only upon a showing of good cause.

The Executive Director or any respondent may request the continuance of a hearing date. The requester must serve the request on the Commission Chair and provide a copy of the request to the opposing party no later than 10 working days before the date of the hearing. The Commission Chair shall have the discretion to consider untimely requests. The Commission Chair or the Commission Chair's designee shall approve or deny the request within five working days of the submission of the request. The Commission Chair or the Commission Chair's designee may grant the request only upon a showing of good cause.

H. Referrals to Other Enforcement Agencies

At any time after the Commission takes jurisdiction over a complaint, the Commission or Executive Director may refer the matter to another government agency or official if the Commission determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

A determination by the Executive Director that no further action should be taken on a matter shall not prevent any other government agency from initiating its own enforcement action, including disciplinary action, based on the same allegations and facts.

I. Recordings and Transcripts

Every probable cause hearing and hearing on the merits shall be tape-recorded, and the tapes shall be retained by the Commission until the opportunity for appeal has been exhausted. Copies of a tape shall be available to the respondent upon request. Where the Commission assigns a commissioner or a hearing officer to determine probable cause or hear a case on the merits, the hearing shall also be recorded by a court reporter.

J. Place of Service or Delivery

1. Whenever these Regulations require service on or delivery to the Commission, its members, or the Executive Director, service and delivery shall be effected at the Commission office.

2. Whenever these regulations require service on or delivery to a respondent, or his or her committee, service and delivery shall be effective and sufficient if made by U.S. Mail and Certified Mail, or via personal delivery, to:

a. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current address.

b. If the respondent is a former City employee, to the address listed with the City's retirement system.

c. If the respondent is a current or former candidate or committee registered with the Ethics Commission, to the address provided to the Ethics Commission by that candidate or committee.

d. If subsections (a) through (c) are not applicable, to an address reasonably calculated to give notice to and reach the respondent.

It is the responsibility of City employees, or candidates or committees registered with the Ethics Commission, to maintain accurate addresses with relevant City Departments. The Executive Director therefore may rely on those addresses in carrying out the objectives of the Commission.

3. Service and delivery are effective upon the date of service, not the date of receipt.

K. Page Limitations and Format Requirements

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 11 point type. Each page and any attachments shall be consecutively numbered.

L. Public Summary of Dismissed Complaints

Notwithstanding any other provision of these regulations, the Executive Director may provide a public summary of dismissed complaints. Such summary may include, but is not limited to, a generic description of each dismissed complaint and a summary of the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

XIV. Stipulated Orders

1. At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

- (a) the proposed stipulation, decision and order is subject to approval by the Commission;
- (b) the respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;
- (c) the respondent understands and acknowledges that the stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- (d) the respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and
- (e) in the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

2. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-11.

3. (a) Once the Executive Director enters into a stipulated agreement with a respondent, the Executive Director shall inform the Commission of this stipulation. Thereafter, any two or more members of the Commission may cause the stipulation to be calendared for consideration by the full Commission in a closed session at the next Commission meeting occurring no sooner than 10 days from the date the Executive Director informs the Commission of the stipulated agreement. If there is a vacancy on the Commission or if a member must recuse himself or herself from consideration of the stipulated order, one member of the Commission may cause the stipulation to be calendared. Commissioners' requests that a stipulated agreement be calendared for consideration by the full Commission must be received by the Executive Director no fewer than 5 days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

(b) Stipulated orders must be approved by the Commission and, upon approval, be announced publicly. The stipulated order shall have the full force of an order of the Commission.

XV. SEVERABILITY

If any provision of these Regulations, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

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